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June 26, 2006

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**VIA ELECTRONIC MAIL**

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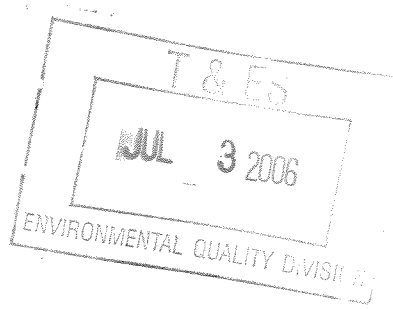
Environmental and Natural Resources Division
United States Department of Justice
Washington, D.C. 20044-7611

Attn: Ms. Tonia Fleetwood
Legal Information Specialist




**Re: United States v. Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC; D.J. Ref. 90-5-2-1-07829**

Dear Ms. Fleetwood:

On behalf of the City of Alexandria, Virginia, I submit the enclosed Comments in response to the Department of Justice's Notice of Lodging of the Proposed Amended Consent Decree in the above-referenced case.

If you have any questions, please contact me at (202) 419-4218 or jbritton@schnader.com.

Sincerely,

John B. Britton
For SCHNADER HARRISON SEGAL & LEWIS LLP

Counsel for the City of Alexandria

JBB/maj
Attachments

**CITY OF ALEXANDRIA COMMENTS**

**PROPOSED AMENDED CONSENT DECREE**
**in**
**UNITED STATES AND STATE OF MARYLAND**
**v.**
**MIRANT MID-ATLANTIC, LLC AND MIRANT POTOMAC RIVER, LLC**

**C.A. No. 1:04CV1136**

## I. INTRODUCTION

The City of Alexandria, Virginia ("Alexandria"), hereby submits its Comments in response to the proposed Amended Consent Decree between the United States, the State of Maryland and the Commonwealth of Virginia, and Mirant Mid-Atlantic, LLC, and Mirant Potomac River, LLC, (collectively "Mirant") lodged on May 8, 2006 in the United States District Court for the Eastern District of Virginia. The Amended Consent Decree purportedly resolves federal and state claims of violations in 2003 of oxides of nitrogen ("NOx") emission limits at Mirant's Potomac River Generating Station ("PRGS"). In this matter, Alexandria's primary interests are (i) the adverse public health and environmental impacts on Alexandria and its residents due to emissions from and activities at the PRGS, and (ii) within the region, to avoid a disproportionate adverse impact on Alexandria from such emissions and activities. The Amended Consent Decree does not satisfy these interests and fails to adequately protect the public health. For the reasons set out in these Comments, Alexandria is opposed to the proposed Amended Consent Decree in its present form.

The proposed Amended Consent Decree is a result of more than a year and a half of negotiations between the federal and state agencies and Mirant since the lodging in the U.S. District Court of the original Consent Decree in September, 2004. The sole purpose of these

extended negotiations was to address the ambiguities in the original Consent Decree related to Mirant's obligations for environmental compliance at the Maryland power plants. There was no change in the substantive environmental provisions related to the PRGS between the original and amended Consent Decrees. The Amended Consent Decree establishes an operating regime for the PRGS that ensures continued excessive emissions of pollutants that are adverse to the public health. The PRGS cannot satisfy federal and state standards for air toxic and criteria pollutants or reduce to the maximum extent possible the fugitive dust emanating from the site. There is no showing that the regulation of $NO_x$ emissions for the "system" (as fabricated for this litigation) will achieve improved levels of air quality in the region – a core assumption of the Amended Consent Decree – over those attained through existing legal and regulatory mechanisms. Furthermore, operational changes at the PRGS subsequent to the original Consent Decree have changed the calculation of emissions, specifically of particulate matter, a condition that the Amended Consent Decree does not accommodate. Resolution of these outstanding issues should occur prior to the approval of the Amended Consent Decree.

Put simply, the proposed Amended Consent Decree will not provide adequate protection to Alexandria and its residents from the PRGS. Accordingly, the Amended Consent Decree should not be approved without a full assessment of the PRGS's comprehensive compliance with air quality standards and the full disclosure of all documents and analyses, including from the State of Maryland, that support the assumptions and provide the rationale for the proposed Amended Consent Decree.

## II. BACKGROUND

The PRGS is located in a densely populated urban area, adjacent to the Potomac River and surrounded by and in close proximity to residential communities. It is an outdated coal-fired generating plant that predates the 1970 enactment of the Air Pollution Prevention and Control Act, thereby avoiding certain requirements intended to promote compliance with air quality standards. The PRGS is highly inefficient with stack heights that are well below what are necessary to satisfy current ambient air quality standards. Alexandria has expressed, on numerous occasions and in multiple forms, its concerns with the harmful public health and environmental impacts of the PRGS on the surrounding communities and on the city as a whole.

On September 27, 2004, the United States Department of Justice ("DOJ"), the United States Environmental Protection Agency ("EPA"), the State of Maryland Department of Environment ("MDE") and the Commonwealth of Virginia Department of Environmental Quality ("VDEQ") released the initial proposed Consent Decree purporting to be a final judgment and a resolution of issues in the public interest related to the PRGS's violations in 2003 of its ozone season $NO_x$ permit limits. The Dickerson, Chalk Point and Morgantown power plants in Maryland, for each of which Mirant alleged ownership and control, were also subject to the proposed Consent Decree even though there were no allegations of environmental violations at these plants. The Consent Decree was made available for public comment and comments were received by the United States. These public comments were unanimous in their opposition to the proposed Consent Decree based primarily on the adverse impact of the continuing operation of the PRGS on the residents of Alexandria and other nearby jurisdictions. Subsequent discovery of Mirant's failure to disclose to the United States and the regulatory agencies material

information concerning the ownership of two of these Maryland plants forced the parties to re-open negotiations for a modified Consent Decree.

On August 18, 2005, Mirant submitted to VDEQ an air quality study of the emissions from the PRGS conducted by its consultant ENSR Corporation (the "ENSR Study"). On August 19, 2005, Alexandria released the results of its own air quality analysis conducted by AERO Engineering Services (the "AERO Study"). These air quality studies showed widespread and serious violations of the human health-based national ambient air quality standards ("NAAQS") for sulfur dioxide ("$SO_2$"), nitrogen dioxide ("$NO_2$") and particulate matter ("$PM_{10}$" and "$PM_{2.5}$"). The AERO Study also found that emissions of the acid gases hydrogen chloride ("HCl") and hydrogen fluoride ("HFl") exceeded general health-based standards. Mirant has claimed that it did not previously conduct any air quality analysis for the PRGS.

Subsequent to the release of these studies, the VDEQ determined that the emissions from the PRGS were contributing to modeled exceedances of the NAAQS and requested that Mirant undertake such action as is necessary to ensure protection of human health and the environment. In response to VDEQ request, Mirant ceased full operation of the PRGS on August 24, 2005. Since September 2005, the PRGS has operated at varying levels to satisfy certain electricity reliability demands. It also has experimented with the injection of sodium sesquicarbonate ("Trona"), a silica-based, powdery substance, in its combustion process to control $SO_2$ emissions. There are no documented examples of the use of Trona for large scale and sustained control of $SO_2$ in any other coal burning power plant in the country.

On May, 8, 2006, more than a year and a half after the initial Consent Decree, the United States released for public comment the Amended Consent Decree in this case. With respect to

the PRGS, there are no substantive modifications between the provisions of the Amended Consent Decree and those of the initial Consent Decree. All of the previously submitted public comments remain relevant to the Amended Consent Decree. To ensure the protection of its residents, Alexandria engaged the services of AERO Engineering and other consultants who, in close coordination with Alexandria's technical staff, have provided the framework for a scientific and technical evaluation of the proposed Amended Consent Decree on which the following comments are based.

## III. TECHNICAL COMMENTS

These Comments primarily pertain to the operation of the PRGS and its impacts through stack emissions and fugitive dust on the adjacent and nearby communities in Alexandria. They also reflect Alexandria's serious concerns over the disproportionate adverse impact on local air quality *vis a vis* regional effects as a result of the focus on other plants in the Mirant "system". In their purported attempt to curtail regional air pollution from the Mirant "system", the regulatory agencies should be mindful of the PRGS's long-standing violations of the NAAQS and its continuing harm to the surrounding communities' public health and the local environment.

### A. Changed Regulatory Circumstances and Operations At PRGS Require A Modified Settlement Regime

The Amended Consent Decree must be evaluated within the framework of the regulatory regime implicated in Virginia's Notice of Violation against Mirant in 2003. This regime, embodied in Virginia's State Implementation Plan ("SIP"), requires Virginia to develop plans to attain compliance with ambient air quality standards in regions that do not currently meet such standards. These plans specify control requirements or scenarios for contributing polluting

sources that are the results of detailed and comprehensive air quality models. For ozone, these models must simulate time-dependent reactions between sunlight and the $NO_x$ and volatile organic compounds ("VOCs") pollutants. These control scenarios simulate hundreds of sources, using time scales on the order of days and weeks and distance scales up to hundreds of kilometers to calculate hourly ozone levels. Accordingly, when an agency undertakes the modeling simulations that are necessary to evaluate the most cost-effective control scenario for ozone, it is a computer-intensive and staff-intensive process, usually requiring the skills of several experienced analysts to simulate many potential scenarios and to evaluate outcomes against criteria.

This type of comprehensive, regional modeling and analysis occurred to develop the SIP Call, a combined effort over several years by many states extending from Virginia to Maine, and including the mid-Atlantic and northeast states' regional air quality agencies. It is the $NO_x$ emission constraints within this SIP Call that regulators determined would be necessary to meet ozone standards in the northern Virginia area, and it was this SIP Call's requirement that the PRGS violated in 2003, thus precipitating the regulatory action that produced this Amended Consent Decree.

The Amended Consent Decree changes the results of the multi-faceted control scenarios of the SIP Call. Conspicuously absent is the analysis to demonstrate how the measures set out in the Amended Consent Decree – *i.e.*, the contrived alternative to the limit imposed on the PRGS by the SIP Call – will accomplish the intent of the SIP to reduce further the levels of ozone in northern Virginia. In fact, given the redundant concessions from Mirant, there can be no positive demonstration that the Amended Consent Decree significantly improves air quality over that achieved with the existing legal and regulatory mechanisms. To the contrary, the results of the

modeling analyses upon which the Amended Consent Decree relies shows that the proposed $NO_x$ ozone season limits for the PRGS likely will have a negative impact on the SIP.

The current regulatory regime, not that of 2004, frames the analysis of the $NO_x$ limits set out in the Amended Consent Decree. Since the public review of the initial Consent Decree in October 2004, the State of Maryland enacted the Healthy Air Act and the EPA finalized the Clean Air Interstate Rule ("CAIR"), both of which impose substantive environmental obligations on the Mirant plants that overlap significantly with those set out in the Amended Consent Decree. By extending the ozone season limits to full year operation and by placing limits on the extent to which trading can be used to meet these limits, both CAIR and the Healthy Air Act tighten the $NO_x$ emission limits for utilities that were set by the SIP Call.

The Healthy Air Act requires all large electrical generating units in Maryland, including Mirant's Chalk Point, Dickerson and Morgantown plants, to reduce annual $NO_x$ emissions by the year 2009 to fleet-averaged levels no higher than 0.12 lb per MMBtu of $NO_x$. The Amended Consent Decree requires an annual fleet-average for the Chalk Point, Morgantown and Dickerson plants of 0.15 lb per MMBtu by 2010. The CAIR requires Virginia to limit total annual and ozone season $NO_x$ emissions of large electrical generating units to a total budgeted level by 2009. The $NO_x$ annual budgets are equivalent to the amount that results when the SIP Call $NO_x$ ozone season rate of 0.15 lb per MMBtu is extended to the annual period. While the CAIR does allow trading among utilities within states, additional recent regulatory developments in Virginia will limit trading for utilities that are located in non-attainment areas, *i.e.*, for PRGS. Thus, the CAIR imposes on the PRGS an annual limit of 0.15 lb per MMBtu for $NO_x$, equivalent to 2,000 tons per year, with strict limits on the facility's ability to meet that limit through trading.

The Amended Consent Decree provides, however, a less restrictive annual level of 3,700 tons, equivalent to 0.28 lb per MMBtu of $NO_x$ for the PRGS.

There are two other existing regulatory mechanisms that impact the Mirant plants and diminish the purported benefits of the Amended Consent Decree. First, 9 VAC 5-20-180(I) constrains the PRGS's annual emissions of $NO_x$ to 3,700 tons per year, *i.e.,* to a level that was established to assure protection of the $NO_2$ ambient air quality standard in all areas to which the public has access. Second, pursuant to Maryland and federal regulation, there are $NO_x$ emission reductions required at Mirant's Dickerson plant that the Amended Consent Decree claims as concessions.

The attached Table 1 compares the air quality benefits of the existing legal and regulatory requirements to those achieved under the Amended Consent Decree. Instead of the 29,000 tons the regulatory agencies tout, the actual reduction of $NO_x$ under the Amended Consent Decree does not exceed 6,300 tons. The attached Figure 1 compares the $NO_x$ reduction on a year-by-year basis. Table 2 shows that limiting the estimation to the ozone season results in a $NO_x$ reduction of no more than 1,300 tons. Even those limited reductions are mitigated by the short time period in which these $NO_x$ reductions occur -- only two years ahead of reductions already legally required. Thus, in exchange for two years of $NO_x$ reductions, the Amended Consent Decree allows nine years of relaxed $NO_x$ limits at the PRGS, a severe detriment to Alexandria and its residents.

The attached Figure 2 illustrates VDEQ's modeling of the different effects of the SIP Call and the Amended Consent Decree on summertime ozone levels in the northern Virginia-D.C.

metropolitan region.[1] For the years 2006, 2007 and 2008, the existing regulatory framework limits Mirant's Maryland plants to $NO_x$ levels in the ozone season that are equal, or equivalent in their effect, to the levels of the SIP Call. In 2009, the Healthy Air Act imposes limits on the Maryland plants even more stringent than the SIP Call limits. As shown in and supported by VDEQ's modeling scenarios, the relaxation of PRGS's ozone season $NO_x$ limit, as set out in the Amended Consent Decree, results in a lost opportunity to achieve daily ozone reductions of 2 ppb in this non-attainment area – a significant 10% loss of the progress required for attainment.[2]

## B. The Amended Consent Decree Imposes a Disproportionate Adverse Impact on the Residents of Alexandria

As set out above, the main purpose of the Amended Consent Decree is to curtail $NO_x$ emissions on a regional basis by achieving emission reductions at Mirant's power plants in Maryland. The Amended Consent Decree allows the PRGS a seasonal $NO_x$ limit of 1,750 tons in 2004 to 1,475 tons in 2010, which is higher than the 1,019 tons that the VDEQ set out in March 2004 in the draft State Operating Permit ("SOP") for the PRGS. During the public comment period for the draft SOP, Alexandria and the public fully supported the proposed seasonal limit of 1,019 tons. VDEQ never finalized that permit.

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[1] "$NO_x$ Emission Reduction Modeling," T. Ballou of VDEQ to M. Dowd of VDEQ via email transmittal dated September 24, 2004, and "Modeling Demonstration of Potential Ground Level Ozone Concentration Reduction Achieved by Controlling $NO_x$ Emissions from Four Mirant Generating Stations," VDEQ, March 3, 2004, K. Chaudhair of VDEQ to M. Dowd of VDEQ, April 13, 2004. Results referenced are for scenarios using August 12, 1999 as the base date.

[2] The federal and Virginia ambient air quality standard for ozone is equal to 80 ppb for an 8-hour period, and the design value, or historical level, of non-attainment in the northern Virginia-DC region is equal to 99 ppb. Therefore, for each of the years 2004, 2005, 2006, 2009 and 2012, by allowing the relaxation of the PRGS ozone season $NO_x$ limit, the region, comprised of 15 jurisdictions with a population of over four million people, surrenders 10% of the progress required toward attainment.

The Amended Consent Decree does not impose requirements on Mirant beyond those that Mirant must satisfy under other regulatory requirements – *i.e.*, CAIR and the recently adopted Healthy Air Act. Put differently, despite lengthy negotiations, the Amended Consent Decree demands little from Mirant that it is not otherwise legally obligated to do. In fact, the Amended Consent Decree may actually benefit Mirant by affording the PRGS a higher seasonal $NO_x$ limit (1,475 tons compared to 1,019 tons) in perpetuity, in return for Mirant's installation of SCR controls on only one of the Morgantown power plant's generating units, and only slightly in advance of existing legal requirements.

Furthermore, the Amended Consent Decree likely will create an incentive for Mirant to operate the PRGS more than the other plants in the "system" because the lower operating costs at PRGS will be economically favorable to Mirant. It is likely that the PRGS's impacts on the local air quality will become even worse than they have been historically. There is no demonstration, either through regional dispersion modeling or other quantitative analysis of PRGS' emissions, that the limitations imposed by the Amended Consent Decree are better for the local air quality in Alexandria than a hard emissions limit of 1,019 tons per season on the PRGS in combination with the provisions of CAIR and the Healthy Air Act. In the absence of another demonstration, the imposition of the hard $NO_x$ emissions limit of 1,019 tons during the ozone season is warranted by the comprehensive modeling study supporting the SIP Call. The residents of Alexandria, who have borne the health costs of the PRGS's unregulated emissions for the past 50 years, deserve this enhanced protection.

### C. The Lack of Daily Emissions Limits for the PRGS Will Adversely Impact Local Air Quality

The Amended Consent Decree imposes a "system" $NO_x$ emissions limit of 0.15 lb per MMBtu that must be met by the ozone season of 2008. Significantly, this is equivalent to the $NO_x$ emission limit that must be met at each of Mirant's Maryland plants, only one ozone season later. Compliance with this limit is based, however, on a "system"-wide, seasonal average. For Alexandria residents, operation of the PRGS at the limits allowed in the Amended Consent Decree will result in excessive short-term concentrations of other SIP-protected pollutants. The air quality modeling simulations of the PRGS's local impacts show that the facility's operation must be constrained to levels no higher than 10% to 20% of full operation in order to protect all of the SIP-protected pollutants, while the $NO_x$ annual level allowed in the Amended Consent Decree equates to an operational level that is equivalent to historical full operation. Allowing such operation will violate the SIP.

Operation of the PRGS at the limits allowed in the Amended Consent Decree also will exacerbate regional air quality problems on days when it is of most concern, *e.g.*, ozone (air quality) action days because of the relaxation of the SIP-determined level for the PRGS. To address this regional problem, the Amended Consent Decree should impose a daily $NO_x$ emissions limit based on 0.15 lb per MMBtu and require this limit to be met on the worst ozone action (air quality) days -- Code Orange and Code Red days. For PRGS, this limit should simply equal 1,019 tons divided by the number of days in the ozone season, or 6.7 tons per day. If necessary, to limit the adverse impacts on Alexandria and the region, the PRGS would have to reduce production on ozone action days, an insignificant burden in the face of the public health benefit and the flexibility allowed by varying production on other ozone season days. Due to the region's non-attainment designation, this approach is warranted and will complement other

actions initiated by Alexandria and other jurisdictions in the region during the worst ozone action days.

### D. The Amended Consent Decree Fails To Require NAAQS Compliance For All Criteria Pollutants

Although the Amended Consent Decree contains an annual $NO_x$ limit for the PRGS at a level that was set in accordance with the need to protect the $NO_x$ annual ambient air quality standard, it does not afford the residents of Alexandria any protection against load shifting for the other criteria pollutants. The Amended Consent Decree's focus on the criteria pollutants of $NO_x$ and ozone and neglect of other pollutants such as $PM_{10}$, $PM_{2.5}$ and $SO_2$ benefits only Mirant. The Amended Consent Decree should explicitly require compliance with all of the ambient air quality standards. To this end, Alexandria proposes the following additional provision for the Amended Consent Decree:

> Violation of Ambient Air Quality Standard: Mirant shall reduce the level of operation or shut down the facility, as necessary to avoid causing or contributing to the modeled or monitored violation of any of ambient air quality standards for CO, $N0_2$, Lead, $PM_{2.5}$, $PM_{10}$ and $S0_2$, and shall not return to normal operation until such time as can be demonstrated to the satisfaction of DEQ that it will not cause or contribute to the modeled or monitored violation of any of ambient air quality standards.

This is hardly a radical proposal. This proposed provision is consistent with the standard compliance condition under a Title V permit, a process indefinitely and unnecessarily stalled with respect to the PRGS due to the plant's $NO_x$ violations and lengthy negotiations related to the Amended Consent Decree. Put differently, Mirant has unfairly benefited, and the residents of Alexandria wrongly harmed, from the PRGS's violations and Mirant's dilatory tactics concerning resolution of all public health and environmental issues. The provision also reflects Alexandria's concern that the PRGS will likely continue to emit large quantities of $NO_x$ and

other criteria pollutants, as it has done in excessive quantities for the past 50 years, to the detriment of the residents of Alexandria.

### E. The Boiler Operations of the PRGS Should Be Monitored

The PRGS consists of five (5) boilers. Anticipating the requirements of the Amended Consent Decree, Mirant has retrofitted Boilers 3, 4 and 5 with low-$NO_x$ burners and SOFA technology. The Amended Consent Decree is deficient, however, in that it does not require SOFA technology on Boilers 1 and 2. Consequently, the Amended Consent Decree is not fully protective of the public health. In the alternative, the Amended Consent Decree should specify a hierarchy in which the PRGS's boilers are operated, *i.e.*, operation of Boilers 3, 4 and 5 in lieu of Boilers 1 and 2.

### F. The Consent Decree Fails To Analyze The Impacts of Trona Injection

The Trona injection system is a changed operating condition since the release for public comment of the original Consent Decree. There is nothing in the Amended Consent Decree that addresses the impacts of this changed operation. For example, based on publicly available data, there is no support that the Trona system will achieve the anticipated high level $S0_2$ control on a sustained basis. Furthermore, the use of the requisite amounts of Trona for $SO_2$ control will likely result in an increase in particulate matter $PM_{10}$ and $PM_{2.5}$ emissions from the stacks and as fugitive dust – due both to the substantial increase in the amount of flyash generated and operational and system deficiencies in capturing emissions. Without adequate testing of electro-static precipitator ("ESP") inlets and outlets during Trona injection at various loads, and comparing the results with identical testing under baseline conditions using coal that is characteristic of what has been used historically without Trona, there is no certainty that particulate matter emissions will not increase. The Amended Consent Decree fails, however, to

adequately address the impacts of Trona and its hazardous air pollutant components, including on public health, and Alexandria's and the community's long-standing concerns over particulate matter emissions from the PRGS. Furthermore, given the substantial increase in the amount of flyash at the PRGS site, the use of Trona will overwhelm any benefits achieved by the supplemental environmental projects ("SEPs") required by the Amended Consent Decree.

It is important that the Amended Consent Decree also establish a protocol, subject to public scrutiny, for detailed testing of $SO_2$, $PM_{10}$, $PM_{2.5}$ and Trona's hazardous air pollutant emissions, including, but not limited to, identification of operational scenarios for Trona injection and use of Conditional Test Method 40 with Method 202 for evaluation of $PM_{2.5}$ emissions. For purposes of continued compliance, the Amended Consent Decree should require the installation of continuous emission monitors for testing of $PM_{10}$ emissions, installed and operated under approved protocols.

**G. Supplemental Environmental Projects Are Inadequate.**

The SEPs within the Amended Consent Decree do not include several of the recommendations of Mirant's own consultant, CH2M Hill, for reducing fugitive dust impacts as set out in its report entitled "Fugitive Dust Review" (July 20, 2001). The Amended Consent Decree should include all of these recommendations, including, but not limited to, (i) maintenance of the coal piles to reduce side slopes and overall height, (ii) covers for ash transport trucks and (iii) an EPA-approved perimeter monitoring program for particulate matter.

Additionally, one of the project requirements stipulated in the SEPs appendix to the Amended Consent Decree--the installation of secondary baghouse dust collectors--has already been altered and the project replaced with an alternative arrangement that is significantly different. Mirant and the regulatory agencies did not present this alternative arrangement for

## ***Table 1.*** *Cumulative Annual NOx Reduction Achieved by Consent Decree vs. NOx Relaxation at PRGS*

| Year | Consent Decree's System-Wide Annual Tonnage Limitation for $NO_x$ | Required Annual Tonnage Limitation for PRGS due to NAAQS and CAIR[2] | Required Annual Tonnage Limitation for Dickerson under NSR[1] and Clean Power Rule | Annual Emissions of NOx, Chalk Point (2004 through 2008 uses 2003 emissions, CPR from 2009 forward)(3) | Annual Emissions of NOx, Morgantown (2004 - 2008 uses 2003 emissions, CPR from 2009 forward)(3) | Annual Tonnage Limits of Four Plants In Absence of Consent Decree | Reduction Required by Consent Decree over Existing Regulatory Programs | | *Cumulative NOx Annual Relaxation that CD allows at PRGS in return for CD, tons (does not include 2003)* |
|---|---|---|---|---|---|---|---|---|---|
| **2003** | -- | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | | | 1081 |
| **2004** | 36,500 | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | *-5,096* | | 731 |
| **2005** | 33,840 | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | *-2,436* | | 606 |
| **2006** | 33,090 | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | *-1,686* | | 581 |
| **2007** | 28,920 | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | *2,484* | | 581 |
| **2008** | 22,000 | 3,700 | 6,785 | 7,203 | 13,716 | 31,404 | *9,404* | | 581 |
| **2009** | ***19,650*** | 2,010 | 2,150 | 2,960 | 5,168 | ***12,288*** | *-7,362* | | 581 |
| **2010, 2011** | ***16,000*** | 2,010 | 2,150 | 2,960 | 5,168 | ***12,288*** | *-3,712* | | 456 |
| **2012** | ***16,000*** | 1,675 | 1,773 | 2,440 | 4,261 | ***10,149*** | *-5,851* | | 456 |

***CD's Actual Total NOx Annual Reduction over Already-Existing Regulatory Programs, tons =*** ***11,887*** ***vs.*** ***5,654***

## ***Table 2. Cumulative Ozone Season NOx Reduction Achieved by Consent Decree vs. NOx Relaxation at PRGS***

| Year | System-Wide Ozone Season Tonnage Limitation for $NO_x$ | PRGS with CD | PRGS w.out CD | Ozone Season Tonnage Limitation for Dickerson (uses 2003 emissions for 2004 - 2008, CPR for 2009 forward) | Ozone Season Tonnage Limitation for Morgantown (uses 2003 emissions for 2004 - 2008, CPR for 2009 forward) | Ozone Season Tonnage Limitation for Chalk Point (uses 2003 emissions for 2004 - 2008, CPR for 2009 forward) | Ozone Season Tonnage Limit of Plants in Absence of Consent Decree | Reduction Required by Consent Decree for Ozone Season Tonnage over Existing Regulatory Programs | | *Total NOx Ozone Season Relaxation that CD allows at PRGS in return for CD, tons (does not include 2003)* |
|---|---|---|---|---|---|---|---|---|---|---|
| 2003 | | 2,100 | 2,100 | 2,060 | 5,339 | 3,118 | | | | 1081 |
| 2004 | 14,700 | 1,750 | 1,019 | 2,060 | 5,339 | 3,118 | 11,536 | *-3,164* | | 731 |
| 2005 | 13,340 | 1,625 | 1,019 | 2,060 | 5,339 | 3,118 | 11,536 | *-1,804* | | 606 |
| 2006 | 12,590 | 1,600 | 1,019 | 2,060 | 5,339 | 3,118 | 11,536 | *-1,054* | | 581 |
| 2007 | 10,190 | 1,600 | 1,019 | 2,060 | 5,339 | 3,118 | 11,536 | *1,346* | | 581 |
| 2008 | 6,150 | 1,600 | 1,019 | 2,060 | 5,339 | 3,118 | 11,536 | *5,386* | | 581 |
| 2009 | ***6,150*** | ***1,600*** | ***1,019*** | 976 | 2,141 | 1,293 | ***5,429*** | *-721* | | 581 |
| 2010,2011 | ***5,200*** | ***1,475*** | ***1,019*** | 976 | 2,141 | 1,293 | ***5,429*** | *229* | | 456 |
| 2012 | ***5,200*** | ***1,475*** | ***1,019*** | 806 | 1766 | 1065 | ***4656*** | *-544* | | 456 |

***CD's Actual Total NOx Ozone Season Reduction over Already-Existing Regulatory Programs, tons =*** ***6,961*** ***vs.*** ***5,654***

## Figure 1. What Concessions in Annual NOx Limits is Mirant Really Making for the Consent Decree?

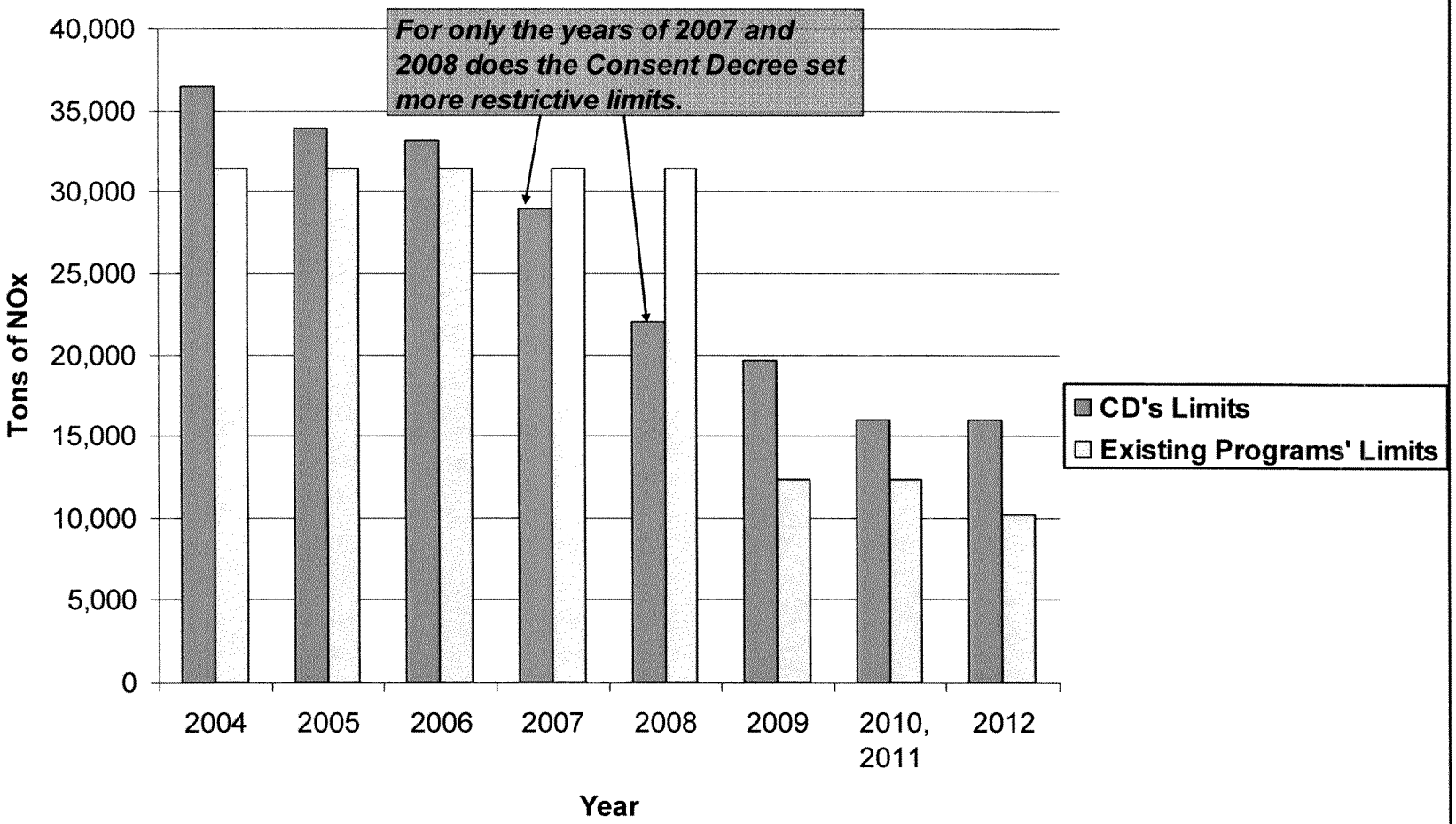

***Figure 2. What does the Consent Decree Achieve in Ozone Reduction?***